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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MEDALIA RODRIGUEZ and  
12 JUAN ALCALA, on behalf of  
13 themselves and on behalf of all  
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 WESTERN MESQUITE MINES,  
18 INC., a Nevada Corporation; NEW  
19 GOLD, INC., a Canadian  
20 Corporation; and DOES 1  
21 THROUGH 150, Inclusive,

22 Defendants.  
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CASE NO. 11CV0330 MMA (POR)

**ORDER:**

- (1) **CONDITIONALLY  
CERTIFYING SETTLEMENT  
CLASS;**
- (2) **PRELIMINARILY APPROVING  
PROPOSED SETTLEMENT;**
- (3) **APPOINTING CLASS  
REPRESENTATIVES, CLASS  
COUNSEL, AND SETTLEMENT  
ADMINISTRATOR;**
- (4) **APPROVING FORMS OF  
NOTICE OF PROPOSED CLASS  
ACTION SETTLEMENT,  
NOTICE OF INDIVIDUAL  
WEEKS WORKED, AND  
REQUEST FOR EXCLUSION;  
AND,**
- (5) **SETTING HEARING FOR FINAL  
APPROVAL OF SETTLEMENT**

[DOC. NO. 23]

1 Plaintiffs Medalia Rodriguez and Juan Alcala (“Plaintiffs”), on behalf of  
2 themselves and others similarly situated, and Defendants Western Mesquite  
3 Mines, Inc., New Gold, Inc. and Does 1-150 (collectively, “Defendants”) have  
4 filed a joint motion for conditional certification of a settlement class in this action,  
5 preliminary approval of the parties’ proposed settlement, approval of the Notice of  
6 Proposed Class Action Settlement, the Notice of Individual Weeks Worked, and  
7 the Request for Exclusion, and the setting of a date for the hearing on final  
8 approval of the settlement.

9 The Court having read and considered the papers on the motion, good cause  
10 appearing therefore,

11  
12 **IT IS HEREBY ORDERED THAT:**

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14 1. The Court **GRANTS** preliminary approval of the settlement based  
15 upon the terms set forth in the parties Stipulation of Settlement and Release  
16 (“Settlement Agreement”) filed herewith. The settlement appears to be fair,  
17 adequate, and reasonable to the class;

18 2. The settlement falls within the range of reasonableness, appears to be  
19 the product of arm’s-length and informed negotiations, appears to be presumptively  
20 valid, subject only to any objections that may be raised at the final hearing, and  
21 appears intended to treat all Class Members fairly;

22 3. The Court approves, as to form and content, the Notice of Proposed  
23 Class Action Settlement, attached as Exhibit 1 to the Settlement Stipulation, the  
24 Notice of Individual Weeks Worked, attached as Exhibit 2 to the Settlement  
25 Stipulation, and the Request for Exclusion form, attached as Exhibit 3 to the  
26 Settlement Stipulation;

27 4. The Court directs the mailing of the Notice of Proposed Class Action  
28 Settlement, Notice of Individual Weeks Worked, and the Request for Exclusion by

1 first class mail to the class members in accordance with the schedule set forth  
2 below. The Court finds that the dates selected for the mailing and distribution of  
3 those documents, as set forth herein, meet the requirements of due process and  
4 provide the best notice practicable under the circumstances and shall constitute due  
5 and sufficient notice to all persons entitled thereto;

6 5. It is ordered that the settlement class is preliminarily certified for  
7 settlement purposes only, which class is described as: “All current and former non-  
8 exempt employees of Defendant Western Mesquite Mine, Inc., in Brawley,  
9 California, between February 16, 2011 and the date of preliminary approval”. In  
10 preliminarily certifying the class for settlement purposes, the Court finds that all of  
11 the requirements for class certification as set forth in Federal Rule of Civil  
12 Procedure 23 are satisfied based upon the allegations of the complaint and the  
13 evidence provided to the Court, subject to further consideration at the Final  
14 Approval Hearing after distribution of notice to the members of the Settlement  
15 Class as set forth below. In the event the proposed settlement is not consummated  
16 for any reason, the conditional certification set forth in this paragraph shall be of no  
17 further force or effect;

18 6. The Court confirms Philip A. Downey, Anthony N. Luti and Dennis P.  
19 Wilson, have fairly and adequately represented the interests of the Settlement Class,  
20 will continue to do so and therefore pursuant to Federal Rule of Civil Procedure  
21 23(g)(1), are hereby appointed class counsel for purposes of representing the  
22 Settlement Class conditionally certified in this Order. The Court **GRANTS**  
23 preliminary approval to an award of attorneys’ fees to class counsel in an amount  
24 not to exceed \$437,500, plus costs not to exceed \$30,000, both of which to be set  
25 on motion;

26 7. The Court confirms Medalia Rodriguez and Juan Alcala have fairly  
27 and adequately represented the interests of the Settlement Class, will continue to do  
28 so and therefore pursuant to Federal Rule of Civil Procedure 23(a)(4), are hereby

1 appointed as the class representatives. The Court **GRANTS** preliminary approval  
 2 to a proposed service payment to them of \$5,000 each, which amount is to be set on  
 3 motion;

4 8. The Court confirms CPT Group as the settlement administrator and  
 5 grants preliminary approval of the reasonable costs of administration payable to  
 6 CPT Group in an amount not to exceed \$20,000; and,

7 9. The Court **GRANTS** preliminary approval of the Public Attorneys  
 8 General Act payment of \$3,750 to the Labor Work Force Development Agency.

9 10. The Court orders the following schedule for the specified  
 10 actions/further proceedings:

11 EVENT	TIMING
12 Last day for Defendants to provide to 13 Settlement Administrator a database of all 14 Settlement Class Members, including names, 15 last known addresses, social security 16 numbers, and individual work weeks	Within 21 days after entry of Court's Order granting preliminary approval of Settlement
17 Last day for Settlement Administrator to mail 18 Notices to Settlement Class Members	Within 21 days after Settlement Administrator's receipt of database
19 Last day for Settlement Class Members to 20 submit Request for Exclusion form	Within 30 days after mailing of class Notice
22 Last day for Settlement Administrator to 23 provide to Defendants' counsel and Class 24 Counsel copies of all Request for Exclusion 25 forms, and a W-9 Form	No later than 10 days after the last day for Settlement Class Members to Request for Exclusion forms (within 10 days of receipt)
26 Last day for filing and service of moving 27 papers in support of final Settlement approval	At least 30 days after last day for Settlement Class Members to submit Request for Exclusion

EVENT	TIMING
and request for attorneys' fees and costs	forms and at least 21 days before the Final Settlement hearing
Last day for Class Counsel to provide the Court with a declaration by the Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	At least 10 days prior to the final Settlement approval hearing
Final Settlement approval hearing	<b><u>January 30, 2012 at 3:00 p.m.</u></b>
Last day for Defendants to make payment to Settlement Administrator for individual settlements, court-approved attorney's fees and costs, service payments to Plaintiffs, LWDA payment and Settlement Administrator's fees	21 days after entry of Court Order granting final Settlement approval, or, if there is any objection to the settlement, within 21 days after expiration of the time to file appeals or the resolution of any appeals filed, unless Defendants request and Class Counsel agrees to additional time, which agreement will not be unreasonably withheld
Last day for Settlement Administrator to mail payments to individual Settlement Class Members	No later than 14 calendar days after receipt of the funds from Defendants
Dismissal of action with prejudice	Upon filing of proof that timely claims have been paid


11. A final hearing will be held on **January 30 2012, at 3:00 p.m.**, in Courtroom 5, 940 Front Street, San Diego, CA 92101, to determine whether the Settlement should be granted final approval as fair, reasonable, and adequate as to

1 the Class Members. The Court will hear all evidence and argument necessary to  
2 evaluate the Settlement, and will consider the request of Plaintiffs for Class  
3 Representative Service payments to each of them, and Class Counsel's request for  
4 the Class Counsel Fees Payments and Class Counsel Litigation Expenses Payments.  
5 Class Members and their counsel may support or oppose the Settlement and the  
6 motion for awards of the Class Representative Payments, the Class Counsel Fees  
7 Payments, and the Class Counsel Litigation Expenses Payments, if they so desire,  
8 as set forth in the Class Notice.

9 12. The Court reserves the right to continue the date of the final approval  
10 hearing without further notice to Class Members. The Court retains jurisdiction to  
11 consider all further applications arising out of or in connection with the Settlement.  
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13 **IT IS SO ORDERED.**

14 Dated: November 15, 2011.

15   
16 Hon. Michael M. Anello  
17 United States District Judge  
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